

WOOLLACOTT JANNOL LLP
Cynthia Woollacott, Esq. (#110119)
10350 Santa Monica Boulevard
Suite 350
Los Angeles, California 90025-5075
310.277.5504
310.552.7552

Attorneys for defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EXACT SCIENCE PRODUCTIONS,)
LLC,)
PLAINTIFF,)
VS.)
FEMME KNITS INC., ET AL.,)
DEFENDANTS.)

CASE No. 3:07 cv 2296 JF

ANSWER OF DEFENDANTS
FEMME KNITS, INC.,
FOREVER 21, INC.,
FOREVER 21 RETAIL, INC.,
NORDSTROM, INC.,
DELIA*S, INC., AND
ALLOY, INC.:
DEMAND FOR JURY TRIAL

Defendants Femme Knits, Inc., Forever 21, Inc., Forever 21 Retail, Inc., Nordstrom, Inc., dELIA*s, Inc. and Alloy, Inc. ("defendants") hereby answer the complaint of Exact Science Productions, LLC as follows by respective paragraph number.

1. Admit federal question jurisdiction is proper pursuant to 28 U.S.C. § 1338(a) as it arises under federal copyright law.

2. Defendants do not contest venue in this district.

3. Admit this is an intellectual property action and defendants do not object to district-wide assignment.

1 4. Admit this action seeks damages and injunctive relief for alleged
2 copyright infringement. Deny any copyright infringement occurred.

3 5. Denied based on lack of information or knowledge, except to note
4 the Secretary of State shows plaintiff's name without a hyphen.

5 6. Admit.

6 7. Deny, Hapa merged into Femme Knits, Inc. and no longer exists.

7 8. Admit.

8 9. Admit.

9 10. Admit.

10 11. Admit.

11 12. Admit dELIA*s, Inc. is a Delaware corporation with its principal
12 place of business at 50 West 23rd St., 9th and 10th Floors, New York, NY
13 10010. Deny the remainder.

14 13. Admit Femme Knits, Inc. has done and does business in this
15 district. Deny the remainder.

16 14. Admit defendants have done and do business in this district
17 (dELIA*s and Alloy by mail from out of state and without a physical place of
18 business here). Deny the remainder.

19 15. Deny based on lack of information or knowledge.

20 16. Deny based on lack of information or knowledge.

21 17. Admit plaintiff is the claimant on a copyright registration dated 16
22 October 2006 for a heart shaped cassette design that names "Gemocil Mateo"
23 as the author, registration number VA 1-378-516. Deny the remainder based
on lack of information or knowledge, particularly since the complaint does
not contain a depiction of the work itself.

 18. Admit Femme Knits, Inc. sells its products in the United States and
other countries, Hapa merged into Femme Knits, Inc. and no longer exists,
and Femme Knits, Inc. uses various trademarks on its products including

Scrapbook Originals and Crafty Couture. Deny the remainder.

19. Deny.

20. Deny.

21. No response required.

22. Admit plaintiff is the claimant on a copyright registration dated 16 October 2006 for a heart shaped cassette design that names "Gemocil Mateo" as the author, registration number VA 1-378-516. Deny the remainder based on lack of information or knowledge.

23. Deny.

24. Deny.

25. Deny.

26. Deny.

27. Deny.

28. Deny.

29. Deny.

Affirmative defenses

1. Defendants assert laches and estoppel from plaintiff's inexcusable delay, to defendants' prejudice, in registering its copyright on 16 October 2006 and in filing this suit in April 2007, both over two years after defendant Femme Knits, Inc. designed the accused work and plaintiff and defendants offered the respective designs for sale.

2. Defendants assert, to the extent this is an affirmative defense and not an element of plaintiff's count, that plaintiff lacks standing to sue because it was not the author of the work (which was not depicted in the complaint) and it is not the owner of the copyright or the owner of exclusive rights under the copyright.

3. Defendants assert, to the extent this is an affirmative defense and not an element of plaintiff's count, that the alleged copyrighted work (which

1 was not depicted in the complaint) lacks originality and may have been
2 copied from a prior source.

3 4. Defendants assert the accused design was fair use of a prior source.

4 5. Defendants assert, to the extent this is an affirmative defense and
5 not an element of plaintiff's count, that plaintiff cannot show copying.

6 6. Defendants assert the accused design was an independent creation
7 of Femme Knits, Inc.

8 7. Defendants assert they had innocent intent.

9 8. Defendants assert plaintiff's unclean hands.

10 **Prayer**

11 Defendants respectfully request judgment in their favor and against
12 plaintiff in all respects; entry of an Order dismissing the complaint; an award
13 of full costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. §
14 505; and an award of any other and further relief as the Court may deem
15 just or proper.

16 DATED: 7 August 2007

WOOLLACOTT JANNOL LLP

17 By 

CYNTHIA WOOLLACOTT
Attorneys for defendants

18 **Demand for jury trial**

19 Defendants demand trial by jury pursuant to Local Rule 3-6.

20 DATED: 7 August 2007

WOOLLACOTT JANNOL LLP

21 By 

CYNTHIA WOOLLACOTT
Attorneys for defendants